IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. No. 16129-30-CII of 2005 and
Civil Revision No. 4190 of 2005

Date of Decision: 7.7.2006

R.C.Puri

...Petitioner.

Versus

State of Punjab and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. O.P. Goyal, Senior Advocate with
Ms. Mamta B. Jain, Advocate for the petitioner.

Mr. Daldeep Singh, Deputy Advocate General, Punjab.

AJAY KUMAR MITTAL, J.

C.M. No. 16129-CII of 2005

For the reasons mentioned in the application, the delay of 28 days in refiling the revision petition is condoned.

CM stands disposed of accordingly.

C.M. No. 16130-CII of 2005

This is an application under Section 5 of the Limitation Act for condonation of nine days' delay in filing the appeal.

Notice of this application was issued to the respondents.

After hearing learned counsel for the parties and perusing the application which is supported by an affidavit, the delay of nine days in filing the appeal is condoned.

CM stands disposed of accordingly.

C.R. No. 4190 of 2005

The plaintiff-petitioner filed a suit for declaration to the effect that the orders dated 25.2.2000 and 7.8.2000 passed by the respondents are illegal, void and not binding and sought permanent injunction that the defendants be restrained from recovering Rs.70,446/- from the salary of the plaintiff.

The facts as narrated in the plaint are that the plaintiff was appointed on 30.12.1963 in the Agriculture Department and is working as Agriculture Information Officer since 1990. It was pleaded that vide order dated 3.11.1998 of Joint Director Agriculture (CC) for Director of Agriculture, Punjab allotted Gypsy No. CH-01-G-0717 to AIO and OSD (Plg) together and was to be used by both of them with mutual consent and the plaintiff being senior officer was made officer-in-charge of the vehicle and the said vehicle was to be parked at his house. It was further pleaded that on the intervening night of 22nd and 23rd of April, 1999, the said Gypsy was stolen from the residence of the plaintiff and a complaint in this regard was lodged with the police on 23.4.1999 and the Joint Director was also informed vide letter of even date. It was further pleaded that although the plaintiff informed the Incharge Police Post Sector-10, Panchkula on 23.4.1999 in the morning about the theft of gypsy but no FIR was lodged and the plaintiff got registered the FIR on 26.4.1999 in Police Station, Sector-5, Panchkula. Vide letter dated 26.4.1999, Shri Daljit Singh, PCS (Administration), Directorate of Agriculture, Punjab was appointed as Inquiry Officer in the matter of theft of gypsy. On 19.5.1999, the Inquiry Officer recorded the statements of AIO and OSD (Plg). It was further pleaded that neither the plaintiff was allowed to be present at the time of recording of the aforesaid statements nor any opportunity to cross examine the witnesses and the

copy of the enquiry report was given. A charge sheet dated 11.11.1999 was issued by the Joint Secretary, Punjab Government, Department of Agriculture under Rule 8 of the Punishment and Appeal Rules for not keeping the vehicle in a safe place and for causing a loss of Rs.one lac to the Government. The plaintiff gave reply to the charge sheet on 3.1.2000. Defendant No.1 passed the order dated 25.2.2000 stating therein that the cost of the gypsy is to be recovered from the plaintiff till the gypsy is traced out. It was further pleaded that the plaintiff vide letter dated 28.5.2000 represented to defendant No.1 for reconsideration of the order dated 25.2.2000 but he was not given any personal hearing and vide order dated 7.8.2000, order of recovery of Rs.70,446/- from the plaintiff until the vehicle is traced out was passed by defendant No.2.

Upon notice, the defendants filed written statement by taking various preliminary objections and the main preliminary objection was that no notice under Section 80 of the Code of Civil Procedure was served upon the respondents before filing the suit. It was pleaded that the plaintiff was given full opportunity by the Inquiry Officer to explain his position and the orders dated 25.2.2000 and 7.8.2000 were legal, valid and speaking orders. All the pleas raised by the plaintiff in the plaint were controverted by the defendants and dismissal of the suit was prayed.

On the pleadings of the parties, the following issues were framed by the trial court:-

"1. Whether the plaintiff is entitled for the decree for declaration as prayed for on the grounds mentioned in the plaint? OPP

2. Whether the plaintiff is entitled for decree for permanent injunction as prayed for? OPP

3. Whether the plaintiff has not come to the court with

clean hands? If so to what effect?

4. Whether the suit is bad for want of notice u/s 80 CPC? OPD

5. Relief."

The trial court on appreciation of evidence came to the conclusion that the plaintiff was issued charge sheet to which he had filed the reply and after considering the same, the order impugned in the suit had been passed. Consequently, it was held that no relief of declaration or injunction could be granted to the plaintiff and the suit filed by the plaintiff was dismissed.

The plaintiff carried an appeal before the District Judge, Chandigarh. The appellate court on an appeal filed by the plaintiff held that the suit was bad for want of notice under Section 80 of the Code of Civil Procedure (for short 'the Code') and ordered the return of the plaint for presentation to the competent court after complying with the requirements of sub-section (1) of Section 80 of the Code. Consequently, the appeal was dismissed.

Learned counsel for the petitioner has assailed the judgment of the appellate court and submitted that firstly, the trial court vide order dated 17.8.2000 had accorded permission to the plaintiff-petitioner to institute the suit without prior notice under Section 80 of the Code to the defendants and the said order of the trial court was never challenged by the defendants. Secondly, the trial court had specifically framed issue No.4 in this regard but the defendant-State had never put in any opposition to the said issue and had thus, conceded the issue in favour of the plaintiff. Lastly, the appellate court, without there being any specific objection of the defendants, of its own had acted totally without jurisdiction in returning the plaint to the plaintiff to be presented to the competent court after complying with the provisions of

Section 80 of the Code. He submitted that in view of judgment of Bombay High Court in **Chandrashekhar Purshottam Rathi v. State of Maharashtra and another, 2002 (2) Civil Court Cases 463 (Bombay)** that once the defendants contested the suit on merits without pleading absence of urgency or want of notice it would be deemed to have waived the requirement of issuance of prior notice under Section 80 of the Code on their part.

Learned counsel for the respondent-State, on the other hand, supported the judgment passed by the appellate court.

I have heard learned counsel for the parties and perused the record. I find considerable force in the submission of learned counsel for the petitioner.

Sub-sections (1) and (2) of Section 80 of the Code which are relevant for the decision of this case as under:-

> **80. Notice.** (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government including the Government of the State of Jammu and Kashmir or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-
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> (a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;
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> (b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c ) in the case of suit against any other State Government, a Secretary to that Government or the Collector of the district;

and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government including the Government of the State of Jammu and Kashmir or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

A careful reading of the above said provisions shows that this section was enacted with the object to ensure that before a suit is instituted by any party against the Government or a public officer in respect of any act done in his official capacity, the Government or the public officer is afforded an adequate opportunity to examine the claim in respect of which the suit is proposed to be instituted and in an appropriate case where the claim is found to be just and genuine to take immediate action to avoid unnecessary litigation and save public money and time without driving the person who has issued notice to institute the suit. The section has been incorporated for advancement of justice and for securing public good by avoidance of unnecessary litigation. However, an exception has been carved out in sub-section (2) of Section 80 of the Code where in a case where the relief claimed in a suit is of an urgent or immediate relief, the suit can be instituted without serving any notice as required under sub-section (1) with the leave of the Court. As per proviso to sub-section (2) the court shall whenever it arrives at a conclusion that no urgency or immediate relief need be granted in the suit, shall return the plaint for presentation to it again after complying with the requirement of notice under Section 80 of the Code.

The trial court vide its order dated 17.8.2000 had granted exemption to the plaintiff to institute the suit without advance notice as provided under Section 80 of the Code and the defendants had accepted the said order. Further, the defendants had not pressed issue No.4 which had been specifically framed before the trial court. Still further, the Bombay High Court in Chandrashekhar Purshottam Rathi's case (supra) while following a judgment of Orissa High Court in **State v. Bamadeb, AIR 1971 Orissa 227** quoted with approval the following observation of the cited case:-

"When an objection that a suit is not maintainable in the

absence of a notice under section 80 is not raised in the trial Court and no issue is joined on this point and the suit is decreed, the plea as to want of notice must be deemed to have been waived and when the plea is taken for the first time in appeal, the Appellate Court is not entitled to dismiss the suit on the ground of absence of notice under section 80."

The appellate court, thus, clearly fell in error while dismissing the appeal and returning the plaint of the petitioner-plaintiff for presentation to the competent court after complying with the requirement of sub-section (1) of Section 80 of the Code. The judgment dated 13.1.2005 is set aside and the matter is remitted to the appellate court to decide the appeal on merits in accordance with law. There shall, however, be no order as to costs.

July 7, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**